IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.444 OF 2007

Wyeth Employees Union)
C/o. 5, Vandana CHS Ltd., Road)
No.4, Pestom Sagar, Chembur,)
Mumbai – 400 089.) ... Petitioner

Versus

1. M/s. Araine Orgachem Pvt. Ltd.,)
Road No.1, Runwal Chambers,)
Chembur, Mumbai – 400 071.)
2. M/s. Wyeth Limited,)
4th floor, RBC Mahindra Towers,)
G.M. Bhosale Road, Worli,)
Mumbai – 400 018.)
3. The Deputy Commissioner of)
Labour, Office of the)
Commissioner of Labour,)
Commerce Centre, Tardeo,)
Mumbai – 400 034.) ... Respondents

Mr. Sanjay Kumar for the petitioner.

Mr. C.U. Singh, sr. advocate with Mr. V.P. Sawant for respondents 1 and 2.

Mr. P.M. Mokashi, A.G.P. for respondents 3 and 4.

CORAM : SWATANTER KUMAR, C.J. &
SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 2ND JULY, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 16TH AUGUST, 2007.

JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. Rule. With the consent of the learned counsel appearing for the parties, taken up for final hearing.

2. The petitioner is a recognized union under section 12 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "the MRTUP Act") for the undertaking of respondent 2. It appears to be the case of respondent 1 (M/s. Araine Orgachem Pvt. Ltd.) and respondent 2 (M/s. Wyeth Limited) that respondent 2 - the erstwhile employer of the members of the petitioner, sold its manufacturing facility at 146, Lal Bahadur Shastri Marg, Ghatkopar (West), Mumbai to

respondent 1 as at the close of business hours of 30/8/2004. According to respondents 1 and 2, from that day the ownership and management of the said industrial establishment stood transferred to respondent 1.

3. The petitioner addressed a letter of demand dated 14/11/2005 to respondents 1 and 2 making a demand of reinstatement of 143 workmen with continuity of service and full back-wages. From the letter of demand, it appears to be inter alia, the case of the petitioner that all the workers who were then working in the said plant were pressurized into taking voluntary retirement though no scheme was framed or published. The signatures of the workers were obtained on blank papers and promised amounts were not paid. The petitioner then held a General Body meeting in which a new committee was appointed. The new committee in implementation of its decision to pursue the illegal termination of the services of the workers raised the demand dated 14/11/2005 of reinstatement of the workers with full back-wages and continuity of service contending that the transfer of the

undertaking from respondent 2 to respondent 1 was sham.

4. Respondent 1 sent a reply dated 28/11/2005 to the petitioner's notice of demand stating that the demand raised by the petitioner was illegal and unjustified. The stand of respondent 1 was that the concerned workmen are not workmen of respondent 1.

5. On 12/12/2005, the petitioner approached the Assistant Labour Commissioner requesting him to intervene in the matter under sections 10 and 12 of the Industrial Disputes Act, 1947 (for short, “the said Act”) read with section 2(k) of the same. On 1/8/2006, the Conciliation Officer submitted his failure report under section 12(4) of the said Act to the Deputy Commissioner of Labour, Bombay.

6. On 14/8/2006, respondent 3 - the Deputy Commissioner (Labour) refused to refer the demand of the petitioner dated 14/11/2005 for adjudication. Respondent 3 observed that the

workmen, who were in the employment of respondent 1 had applied individually for VRS benefit and taken the money by way of individual account payee cheques. He further observed that the employees including Mr. U.N. Karapurkar, who has filed the demand had filed declarations in which it is stated that *"he/they have no concern in any litigation filed in their behalf"*. Respondent 3 observed that, therefore, it is not open for them to contend that they exercised the option under any kind of compulsion and this submission is clearly an afterthought. Respondent 3 further observed that it was stated in the failure report that there was change in the management and the Union of workmen had challenged the agreement between respondents 1 and 2. Respondent 3 noted that the Union of workmen had subsequently withdrawn the said complaint and, therefore, the services of the employees are transferred with effect from 30/8/2004 with continuity of service with all other benefits and they were in the employment of respondent 1. Respondent 3 also concluded that the workmen had obtained the benefits available under the VRS introduced by the management in April, 2005. He further recorded

that after having applied individually for VRS and having taken the money by individual account payee cheques, they have no right to raise any grievance/dispute including the dispute of reinstatement. Respondent 3 recorded the conclusion as under :

> *"1. There is no dispute that the employees Shri Pandurang Aher and 142 others have opted for Voluntary Retirement Scheme introduced by the Management because they have availed and enjoyed the benefits of the said Scheme.*
>
> *2. In the circumstances referred above, the employees after having accepted the benefits, the relationship of employer and employee ceased to exist.*
>
> *3. It is not a case of termination of services by the Management."*

After recording the above conclusions, respondent 3 refused to refer the demand dated 14/11/2005 for adjudication.

7. Being aggrieved by the said refusal, the petitioner has approached this court.

8. We have heard Mr. Sanjay Kumar, the learned counsel appearing for the petitioner at some length. He submitted that respondent 3 i.e. the Deputy Commissioner of Labour while acting under section 10 of the said Act performs an administrative function. While performing an administrative function, he could not have dealt with the merits of the dispute in excess of the powers conferred on him by section 10. He took upon himself the responsibility of adjudication which he was not authorised to shoulder and he has passed the impugned order on grounds which are not germane. The learned counsel submitted that respondent 3 misconstrued the dispute of the petitioner as a case of voluntary retirement erroneously ignoring the petitioner's case of forced resignation tantamounting to termination. He submitted that the case of the petitioner is that the VRS document is a forged document. The erstwhile office bearers of the petitioner have stated that no VRS was displayed on the notice board and the Roznama before the conciliation officer states that it was not in existence on 20/4/2005. The learned counsel submitted that respondent 3 could not have gone into the merits of the case while

dealing with a request to refer the dispute for adjudication, but should have made a reference and then allowed it to be adjudicated upon. In support of his submissions, the learned counsel relied on the judgment of the Supreme Court in ***Workmen of Subong Tea Estate v. The Outgoing Management of Subong Tea State, 1964 (8) FLR 91***, the judgment of this court in ***Saroj N. Patil (Ms.) v. Nuclear Power Corporation of India Limited & Ors., 2006 III LLJ 624***, the judgment of the Calcutta High Court in ***Aparna Kumar Dhasgupta v. M/s. United Industrial Bank India Ltd., 1979 LAB I.C. 506*** and the judgment of the Karnataka High Court in ***Management of Mysore Electrical Industries Ltd., Bangalore v. Kadiah & Anr., 1979 LAB I.C. NOC 31 (KANT).*** Reliance was also placed on the unreported judgment of this court in ***Writ Petition No.110 of 2006 between Philips Electronics India Limited & Anr. v. The Workmen of Philips Electronics India Limited & Ors., decided on 21/3/2007***.

9. Mr. Singh, the learned counsel for respondents 1 and 2, on the other hand, contended that respondent 1 acquired

manufacturing facility from respondent 2 from the close of business hours of 30/8/2004. As a consequence, from 31/8/2004 all the workmen who were working in erstwhile manufacturing facility of respondent 2 became the workmen of respondent 1. From 1/9/2004, they were in receipt of wages from respondent 1. In April, 2005, respondent 1 framed voluntary retirement scheme for the workmen. It was displayed on Notice Board on 12/4/2005. All the permanent workmen then working in the said manufacturing facility opted for early retirement under the said scheme and received VRS compensation from respondent 1. The person who had filed demand on behalf of the employees also opted for voluntary retirement benefits. Workmen took money by account payee cheques and filed declaration that they have no concern with any litigation. Therefore, they cannot urge that they were compelled to accept VRS. He pointed out that the Union of the workmen had withdrawn the complaint filed by them challenging the Sale Deed signed between respondents 1 and 2. Mr. Singh submitted that the employees having individually applied for VRS benefit and having taken money by way of account payee cheques,

it was not open for them to now turn round and say that they were forced to accept voluntary retirement and take the money. This is clearly an afterthought. He submitted that the appropriate Government was right in coming to a conclusion that the employees having accepted the benefits, the relationship of employer employee ceased to exist. In this connection, the learned counsel relied on the judgments of the Supreme Court in ***Punjab & Sind Bank & Anr. v. S. Ranweer Singh Bawa & Anr., 2004 LLR 461; Bank of India & Ors., v. K.V. Vivek Ayer & Anr., (2006) 9 SCC 177; A.K. Bindal & Anr. v. Union of India & Ors., AIR 2003 SC 2189*** and the judgments of this court in ***Gopinath Daulat Dalvi v. State of Maharashtra & Ors., 2005 (2) BCR 135*** and ***Premier Automobiles Ltd. v. PAL VRS Employees Welfare Association & Anr., 2001 III CLR 887.***

10. Mr. Singh submitted that it is true that an order of reference passed under section 10 of the said Act is an administrative order but the appropriate Government has to form an opinion whether an employee is a workman, and, thereafter, it has to consider whether

an industrial dispute exists or is apprehended. Mr. Singh submitted that this is what the appropriate Government has done in this case and it cannot be faulted for it. In this connection, he relied on the judgment of the Supreme Court in ***Secretary, Indian Tea Association v. Ajit Kumar Bharat & Ors., AIR 2000 SC 915*** and the judgments of this court in ***Oil & Natural Gas Corporation Ltd. v. Transport & Dock Workers Union & Ors., 2007 1 CLR 87 and United Labour Union v. Air India Ltd. & Ors., 2004 (6) BCR 121***. Mr. Singh contended that the appropriate Government has taken into consideration relevant material and its reasons are well founded and, therefore, no case is made out for setting aside the impugned order. He submitted that in writ jurisdiction, the court cannot sit in appeal over the order of appropriate Government.

11. The scope and nature of the power of the appropriate Government under section 10 of the said Act has been time and again clarified by the Supreme Court. In ***Ram Avtar Sharma & Ors. v. State of Haryana & Anr., MANU/SC/0228/1985***, the Supreme Court was of the view that while making or refusing to

make a reference under section 10(1) of the said Act, the Government cannot delve into the merits of the dispute. The relevant observations of the Supreme Court are as under :

> *"Now if the Government performs an administrative act while either making or refusing to make a reference under section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. "That would certainly be in excess of the power conferred by section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every Administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review".*

12. In ***Telco Convoy Drivers Mazdoor Sangh & Anr. v. State of Bihar & Ors., MANU/SC/0605/1989***, the Supreme Court observed as under :

> *"While exercising power under section 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10. It is true that in considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits".*

13. In ***Secretary, Indian Tea Association's case (supra)***, the Supreme Court observed that before making a reference under section 10 of the said Act, the appropriate Government has to form an opinion whether an employee is a workman and, therefore, has to consider as to whether an industrial dispute exists or is apprehended. The Supreme Court summarized the law on the point as under :

> *"1. The appropriate Government would not be justified in making a reference under section 10 of the Act without satisfying itself on the facts and*

circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under section 10 of the Act is an administrative order and not a judicial or quasi judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act".

14. We may go a little backwards and refer to yet another judgment of the Supreme Court in ***Bombay Union of Journalists v.***

State of Bombay, AIR 1964 SC 1617, where the Supreme Court has added that patently frivolous and belated claims may not be referred to adjudication by the appropriate Government while exercising power under section 10(1) of the said Act. The relevant observations of the Supreme Court are as under :

> *"…. it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under section 10(1) read with section 12 (5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under section 10(1) ....."*

15. We must also refer to the judgment of this court in ***Saroj Patil's case (supra)*** on which reliance is placed by the petitioners. This court observed as under :

> *"Therefore, the decided cases demonstrate that a prima facie consideration of the merits of the dispute is not alien to the jurisdiction which the appropriate Government exercises to make a reference under section 10(1) of the Industrial Disputes Act, 1947. However, that prima facie evaluation is only with a view to determine whether an industrial dispute exists or is apprehended. Ordinarily, once an industrial dispute exists or is apprehended, it must be left to the Industrial Tribunal to adjudicate upon the dispute. The exception to the rule is couched in a narrow spectrum where the appropriate Government comes to the conclusion that the demand that has been raised is patently frivolous or clearly belated. Otherwise, the whole object of adjudication by Industrial Tribunals would be rendered illusory is the appropriate Government were to launch upon an adjudication of the merits of the dispute."*

16. In an unreported judgment of this court in ***National Organic Chemical Industries Limited v. The State of Maharashtra in Writ Petition No.451 of 2007 decided on 19/4/2007***, a Division Bench of this court to which one of us (Swantanter Kumar, C.J.) was a party, has considered the same question. After taking a resume of several cases on the point, this court has observed that while exercising power to make a reference under section 10(1) of

the said Act, the appropriate Government has to form an opinion as to the existence of employer employee relationship and as to whether a dispute exists or is apprehended. But the appropriate Government cannot adjudicate the dispute. This court further observed that formation of opinion has to be prima facie based upon records before the Authority as well as the report submitted by the Conciliation Officer. The material it considers must be germane to the dispute and not extraneous. A patently frivolous, perverse, vexatious and a stale dispute which does not remain to be an industrial dispute could validly be declined by the appropriate Government.

17. The present case will have to be viewed in the light of the above principles.

18. It is necessary now to turn to the petitioner's case. The basic contention of the petitioner is that the appropriate Government has wrongly concluded that employer employee relationship between the petitioner's members and respondent 1 is snapped because

they have opted for voluntary retirement and accepted compensation. It is their case that VRS was never displayed on notice board and they were forced to accept it. There is, therefore, no snapping of relationship. It is necessary to refer to the judgments cited on this point.

19. In ***A.K. Bindal's case (supra)***, the Supreme Court was considering whether the employees of the Public Sector Enterprises have any legal right to claim that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard. It was urged that the employees of the companies having taken advantage of VRS and having taken the amount without any demur, the relationship of employer and employee had ceased to exist. While accepting this submission, the Supreme Court observed that the petitioners were officers of the companies and were mature enough to weigh the pros and cons of the options which were available to them and

after having applied for VRS and taken the money, it is not open to them to contend that they exercised the option under any kind of compulsion. The relevant observations on which reliance is placed may be quoted.

> *"33. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as `Golden Handshake' . The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."*

20. In ***Bank of India v. O.P. Swarnakar (2003) 2 SCC 721***, the Supreme Court was, inter alia, considering whether optees having accepted the payments/benefits under the scheme could be permitted to resile therefrom. The Supreme Court held that those employees who have accepted the payments/benefits under the scheme cannot approbate and reprobate nor can they be permitted to withdraw.

21. In ***Punjab & Sind Bank's case (supra)***, the Supreme Court was considering whether the respondent who had earlier opted for voluntary retirement scheme could be permitted to withdraw therefrom after having received the payments under the scheme. The Supreme Court observed that the respondent had withdrawn his option on 22/12/2000 and yet without any objection, he received three credits in his account on account of salary including notice pay. Thereafter he repaid his car loan, invested money in PPF and fixed deposits. The Supreme Court further observed that the principle of estoppel extensively discussed in the judgment in

O.P. Swarnakar' scase (supra) applied to the facts. The respondent cannot resile from the scheme.

22. In ***K.V. Vivek Ayer' scase (supra)***, the Supreme Court was dealing with a similar question. The High Court had held that the appellant-bank was not justified in treating the respondent-employee as being covered by the VRS. The Supreme Court observed that the crucial question was whether the employee had utilized the amount deposited. Relying on the judgments of the Supreme Court in ***Punjab National Bank v. Virender Kumar Goel (2004) 2 SCC 193*** and in ***O.P. Swarnakar' scase (supra)***, the Supreme Court observed that the deposit of a part of benefit unilaterally would not amount to acceptance of the benefit under the scheme. However, when there is utilization of the amount so deposited, the employee cannot resile from VRS. Making fixed deposits by the employee is a clear case of utilization. The order of the High Court was thus set aside.

23. We must also refer to the judgment of this court in ***United***

Labour Union's case (supra) on which reliance is placed by the respondents. In that case, the union had challenged the order of the appropriate Government rejecting their claim for reference. This court took note of the peculiar fact that there were settlements between respondent 2 and its workmen represented by the petitioner-union and observed that as the last settlement is still in force, when the workmen gave up the demand for absorption with respondent 1, considering the other material on record, it will not be possible to interfere with the order of reference.

24. The judgment of the Supreme Court in ***Subong Tea Estate's case (supra)*** on which reliance is placed by the petitioners must also be adverted to. In that case retrenchment of the workmen was under challenge. It was argued that the employees had accepted retrenchment compensation and should not now be permitted to question the validity of the retrenchment. The Supreme Court noticed that after retrenchment compensation was paid to the employees, on the next day, they complained that they had been forced to accept the compensation because they were

vertically told that if they did not accept the compensation they would not receive their wages. In the circumstances, the Supreme Court rejected the argument that acceptance of retrenchment compensation by the workmen would create a bar against them. So far as the judgment of the Calcutta High Court and the judgment of the Karnataka High Court on which reliance is placed by the petitioners are concerned, we need not refer to them in extenso because in those judgments a view which is somewhat similar to the view taken in ***Subong Tea Estate's case (supra)*** is taken.

25. The principles which emerge from the judgments of the Supreme Court and of this court to which we have referred to herein above on the question of scope of the jurisdiction of the appropriate Government while acting under section 10(1) of the said Act will have to be summarized so that the arguments of the learned counsel can be appreciated in their light.

(1) When appropriate Government exercises power under section 10(1) of the said Act, it performs an administrative function.

(2) While exercising power under section 10(1) of the said Act, the appropriate Government has to form an opinion whether an employee is a workman and whether an industrial dispute exists or not.

(3) While forming the above mentioned opinion, the appropriate Government cannot adjudicate the dispute itself on merits.

(4) Appropriate Government' sorder under section 10(1) being an administrative order must be based on its subjective satisfaction and the subjective satisfaction must be founded on relevant and germane considerations.

(5) It is permissible for the appropriate Government to conduct a prima facie examination of the merits while acting under section 10(1) of the said Act. However, the scope of that examination is limited and is circumscribed by the limits laid down by the Supreme Court. It has to form an opinion as to whether an employee is a workman, whether an industrial dispute exists or is apprehended but a full fledged detailed enquiry into the merits is not permissible. The appropriate Government may however, have to decide whether claim is frivolous, belated, bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. If the impact of the claim on the general relations between the employer and employee in the region is likely to be adverse, the appropriate

Government may take that into account in deciding whether reference should be made or not. Beyond this, the appropriate Government cannot travel.

(6) Order of the appropriate Government under section 10(1) of the said Act being an administrative order and not judicial or quasi judicial order, while entertaining a writ of mandamus against such an order, the court does not sit in appeal and is not entitled to consider the propriety or the satisfactory character of the reasons unless it appears that the appropriate Government has taken into account any consideration which is irrelevant or foreign.

26. So far as the judgments cited by the learned counsel on the question of effect of acceptance of VRS compensation are concerned, we find that none of the Supreme Court judgments involve the question of appropriate Government's power to refer a dispute for adjudication under section 10(1) of the said Act. In any case, whether after acceptance of compensation, the workmen can challenge the employer's action or not will depend upon facts and circumstances of each case. The judgments cited by the parties in our considered opinion state that unilateral deposit of compensation by the employer may not suggest that the

employees have accepted voluntary retirement snapping the employer and employee relationship, but where the employees without demur accept it and utilise it by spending it or investing it, they cannot later on challenge the scheme on the ground that they were compelled or forced to accept VRS compensation. However, where serious allegations of fraud and misrepresentation are made, the reference may have to be made. The status of the employee may also make a difference. For instance, in ***A.K. Bindal's case (supra)***, the Supreme Court had before it officers of the companies. The Supreme Court observed that they were mature enough to weigh the pros and cons of the options and if they apply for VRS and take money they cannot contend that they were compelled to do so. But, in a given case, if the employees are illiterate and victims of deception and fraud, scales must tilt in their favour at least to the extent that they must be allowed to prove that fraud was practiced on them. Such an enquiry cannot in the nature of things be conducted by the appropriate Government while passing an administrative order under section 10(1) of the said Act. In such cases reference will have to be made and the

Tribunal will have to step in. Adjudication of such dispute can only be done by the Tribunal and not by the appropriate Government which is empowered to pass an administrative order. We are fortified in this view of ours by the unreported judgment of this court in ***Philip's Electronics India Limited's case (supra)***.

27. In the present case, the petitioner contends that no voluntary retirement scheme was ever framed or published. According to the petitioner, an atmosphere of fear was created inside the factory and the workers were called either individually or in small groups and were forced to accept the amounts. The petitioner contends that the said amounts were arbitrarily fixed. Even the promised amounts were often not given and the employees had to accept whatever was given. According to the petitioner, the signatures of the employees were obtained on blank set of forms and on blank papers. It is the case of the petitioner that many cases filed by the union were illegally withdrawn by the then Committee without authority. No General Body meeting was held to decide about the

withdrawal of cases. The union then convened a General Body meeting accepted the resignations of the earlier committee and elected a new committee. According to the petitioner, the new committee has now decided to pursue the illegal termination of the services of the workmen. The petitioner contends that transfer of undertaking from respondent 2 to respondent 1 is sham. The respondents have denied this case and contended that it is an afterthought. According to the respondents, the acceptance of VRS was voluntary and it has put an end to employer – employee relationship.

28. Prima facie, the claim made by the petitioner does not appear to be fraudulent and patently false. In any case, even this aspect, in the facts of this case, will have to be adjudicated upon by the Tribunal. Though this court cannot sit in appeal over the impugned order, we feel that the appropriate Government is swayed by the fact that VRS benefits have been taken by the employees. It has observed that the employees have given declarations and having exercised their option, it is not open to them to contend that they

were forced to exercise their options. Acceptance of benefits by itself may not establish that no force or compulsion was exercised. In this case, this is the most contentious and disputed question of fact which the appropriate Government cannot decide. It is ill-equipped for this task. Yet it has erroneously delved into the merits of the dispute. Relevant considerations have not been taken into account in their proper perspective while refusing reference. Subjective satisfaction of the appropriate Government is, therefore, vitiated. Hence, reference is absolutely essential. We are of the opinion that even on the considerations of industrial peace of harmony the reference must be made.

29. In the view that we have taken, we set aside the impugned order dated 14/8/2006 passed by the Deputy Commissioner of Labour, Mumbai. We direct the Deputy Commissioner of Labour to refer the demand of the petitioner dated 14/11/2005 for adjudication to the Industrial Tribunal under section 10(1) of the said Act.

30. We make it clear that nothing said by us in this judgment should be treated as our expression of opinion on the merits of the dispute which we have directed to be referred to the Tribunal. The Tribunal shall deal with it independently and in accordance with law. All contentions raised by both sides on the merits of the dispute are kept open.

31. Petition is disposed of in the aforestated terms.

[CHIEF JUSTICE]

[SMT. RANJANA DESAI, J.]